

From: s22
To: s22
Cc: s22
Subject: Kingvale And s22 Stations
Date: Monday, 27 June 2016 9:48:19 AM

A brief summary of the Warrants exercised by s22 supervised by s22 .

Monitoring Warrants were exercised on two properties in Central Cape York between Thursday 23 and Saturday 25 June 2016,

Kingvale Station

s37(2)(b)

s22- material irrelevant to scope

s22

s22 | Assistant Director |

Compliance

Environment Standards Division |

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From: s22 [REDACTED]
To: s22 [REDACTED]
Cc: s22 [REDACTED] s22 [REDACTED]
Subject: 160621_27 Field Trip Report Kingvale and s22 [REDACTED]. Stations AS_DM
Date: Monday, 27 June 2016 2:12:35 PM
Attachments: [160621_27 Field Trip Report Kingvale and s22 \[REDACTED\]. Stations AS_DM.pdf](#)

From: s22
To: s22
Subject: 160623_ Inspection Report Kingvale Station
Date: Monday, 4 July 2016 11:00:21 AM
Attachments: [160623_ Inspection Report Kingvale Station.docx](#)

Can you check this please

To: Deputy Secretary Dean Knudson (for decision)

Through: Matt Cahill First Assistant Secretary, Environment Standards Division

KINGVALE STATION- DECISION UNDER SECTION 70(3)- DEEMED REFERRAL

Timing: 11 August 2016, to meet statutory timeframes in which a decision under s70(3) must be made

Recommendation/s:

1. That you determine that the action has been deemed to have been referred under section 70(3) of the EPBC Act.

Agreed / Not agreed

2. That you sign the covering letter to s47F ; at Attachment A.

Signed / Not signed

3. That you sign the *Deemed Referral Instrument* at Attachment B.

Signed / Not signed

4. That you confirm that Attachment 2 to the Determination accurately represents your findings and does not omit any factors you took into account in making your decision,

Agreed/ Not agreed

Deputy Secretary: Dean Knudson

Date:

8-8-16

Comments:

Key Points:

Requested referral under s70(1) EPBC Act

1. On 23 June 2016, you requested s47F of Kingvale Station in Queensland to refer an action, pursuant to section 70(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (the Act)*(Attachment B2(i)). That action was described as:

The clearing of vegetation at Kingvale Station (Lot 1 on KG3, Cook Shire Council) as described in the development permit issued to s47F on 16 April 2014 by the Queensland Department of State Development, Infrastructure and Planning, to the extent that it occurs in the areas identified as A3, A4 or A5 of the map (see Attachment 1), the subsequent use of that cleared land for the production of sorghum, and intensification of cattle grazing.

2. s47F s was requested to refer the action by 15 July 2016, or provide submissions/information in support of why you should not deem the action to have been referred under section 70(3) of the Act.
3. s47F s has neither referred the action nor provided any submissions/information. On 13 July 2016 s47F s, through his solicitor, notified the Department that s47F s does not intend to refer the proposed action as requested (**Attachment B2(iv)**).
4. s47F s solicitor has corresponded with the Department in that period, to:
 - a. ask for documents and information; and
 - b. notify the Department that s47F s had commenced legal proceedings.
5. The information provided to the Federal Court by s47F s did not include any submissions or factual material about why the action should not be referred. s47F s has also not claimed by his court documents that he does not intend to take the action you have requested him to refer.

s42

Statutory basis for decision

6. Under section 70(3) of the Act, if:
 - a. the Minister or delegate has made a request under section 70(1); and
 - b. the period for compliance with the request has ended; and
 - c. the requested person has not referred the proposal to the Minister in accordance with the request,the Minister or delegate may, within 20 business days after the end of that period, determine in writing that the Act has effect as if the requested person had referred the proposed action to the Minister.
7. The Minister has delegated you as decision maker for this matter pursuant to section 515 of the Act.
8. On 15 July 2016, the period for compliance with the request to s47F s under section 70(1) of the Act ended.
9. As such, until 12 August 2016, you may determine in writing that the Act has effect as if s47F s had referred the proposed action.

Current information about the proposed action

10. The state of information about the proposed action at Kingvale Station remains largely the same as that at the time you requested s47F s to refer the action. There are some differences, however, which are:
 - a. We have obtained a copy of a dealing with the land in question, which indicates that it is now correctly referred to as 'Lot 1 on Survey Plan 280074' (**Attachment C**), following changes to the description of the land made by the Queensland Government;

b.

s37(2)(b)

c. Subsequent satellite imagery taken on 9 July 2016 and 22 July 2016 indicates that clearing has still not commenced in areas A3, A4 and A5 (**Attachment D**).

11. None of this additional information raises new adverse matters which have not previously been raised with s47F so that he could respond to them.

Decision whether to deem proposed action referred

12. In making a decision under section 70(3) of the Act, you need to be satisfied that:

- a. You believe, on a reasonable basis, that s47F is proposing to take an action; and
- b. You think that the action may be a controlled action.

13. In these circumstances, we consider that there is a sound basis to make a decision under section 70(3) of the Act to 'deem' the action to be referred. A draft determination under section 70(3) to this effect is attached for your consideration.

Publication of information

14. Under the Act, the determination will be the document which is published on the website, in the absence of a referral from s47F himself.

15. The published version of the determination will be redacted to remove information which is either personal in nature and/or contains information which is not relevant to the public consultation process.

Shane Gaddes
Assistant Secretary
Compliance and Enforcement Branch
Ph: 6274 2760
Mob: s22
[/08/2016]

Contact Officer: s22
Compliance and Enforcement Branch
Ph: s22

ATTACHMENTS

- A. Letter to s47F [For signature]
- B. Deemed referral instrument [for signature]
 - 1. Map
 - 2. Findings of fact
 - i. Request dated 23 June 2016 to s47F to refer the proposed action
 - ii. Letter from s47F to Department dated 29 June 2016
 - iii. Letter from Department to s47F dated 4 July 2016
 - a. Report by s47F, 'Soil Erosion and Downstream Sedimentation Risks associated with Proposed Vegetation Clearing o for Agricultural Development on Kingvale Station', January 2016
 - b. Report of compliance inspection conducted on 23 June 2016
 - iv. Letter from s47F to Department dated 13 July 2016
- C. Title documents in relation to Kingvale Station, which indicates that it is now correctly referred to as 'Lot 1 on Survey Plan 280074'
- D. Satellite imagery of 9 July 2016 and 22 July 2016